**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929**

**WP(C).No. 17400 of 2007(U)**
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**AS.99/2006 of PRINCIPAL SUB COURT,ATTINGAL**
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**PETITIONER:**
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**MADHURI, W/O. SARASAN,**
**AGED 40 YEARS, UDAYAM, MUDAYIL DESOM,**
**VARKALA VILLAGE, TRIVANDRUM.**

**BY ADV. SRI.MILLU DANDAPANI**

**RESPONDENTS:**
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**SATHYASEELAN NADAR, S/O. PONNAYYAN**
**NADAR, AGED 48 YEARS, PUTHEN VILLA VEEDU,**
**MUDAYIL DESOM, VARKALA P.O.**

**BY ADV. SRI.K.P.SREEKUMAR**
**SRI.P.M.SATHEESH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 17400/2007**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**PETITIONER'S EXHIBITS,**

**EXT.P1. COPY OF THE COMPLAINT DT. 29/3/05 BY RESPONDENT IN OS NO. 100/05.**

**EXT.P2. COPY OF THE JUDGMENT DT. 31/08/06 OF MUNSIFF COURT IN OS NO. 100/05.**

**EXT.P3. COPY OF THE JUDGMENT DT. 14/2/07 OF THIS COURT IN FAO NO. 56/07.**

**EX.T.P4. COPY OF THE IA NO. 477/07 DT. 20/3/07 BY RESPONDENT BEFORE SUB COURT, ATTINGAL IN AS NO. 99/06.**

**EXT.P5. COPY OF THE OBJECTION DT. 21/3/2007 BY PETITIONER BEFORE THE RESPONDENT.**

**EXT.P6. COPY OF THE COMMON ORDER DT. 3/4/07 OF SUB JUDGE, ATTINGAL, IN IA NO. 477/07 IN AS NO. 99/06.**

**RESPONDENT'S EXHIBITS**

**EXT.R1A. COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE PETITIONER HEREIN BEFORE THE COURT BELOW.**

*True copy*

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**M.N.KRISHNAN, J**

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**W.P.(C) No.17400 OF 2007**

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**Dated this the 9th day of August 2007**

**JUDGMENT**

This revision petition is preferred against the order of the Sub Court, Attingal in I.A.No.474 of 2007 in A.S.No.99 of 2006. This petition is one for amendment of the plaint filed at the appellate stage. The proposed amendment is to incorporate the words 'as of right' and give the right claimed as easement by prescription. The court, on an elaborate consideration of the materials, granted the amendment. It is against that decision the defendant has come up in appeal. It is a settled proposition of law that in case of easement, there must be specific and definite pleadings. The reason is that by giving a person a right of easement, it amounts restriction of a right of the real owner over that property. Suppose it is a totally new prayer at the appellate stage, certainly the court should not entertain such applications.

2. I had gone through paragraph 4 of the plaint wherein there is a specific averment to the effect that the alleged way has been used for more than 35 years by the plaintiff and the predecessors continuously without interruption. But the words 'as of right' is not seen pleaded there. The

defendant has also understood that the claim of the plaintiff is only that of an easement by prescription. So in order not to defeat the case on a technical question the court has permitted the amendment. I feel there is no introduction of a new case, but what is attempted to be achieved is to make the pleading prefect so that there may not be any lacuna on that. So far as the description of the right is concerned, in paragraph 10 of the judgment of the court below, there is an observation that the right claimed is not specifically stated, but the pleadings make it clear that it can only be an easement by prescription. So to avoid that confusion also an amendment is incorporated. By the proposed amendment no change of character or nature of the suit is there, but is only making it precise.

Therefore I do not find any ground to interfere with the decision rendered by the appellate court in allowing the application for amendment. The writ petition lacks merit and the same is dismissed. Since there was a direction for time bound disposal earlier, the court below shall bear that in mind and bestow its attention to dispose of the matter at the earliest.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**